

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 17-017515 CA (13)

CIVIL DIVISION

DR. JAMES ERIC MCDONOUGH, A.K.A.
DOC JUSTICE, Individually and in his
capacity as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,
Plaintiff,

vs.

CITY OF HOMESTEAD,
a Florida municipal corporation,
Defendant,

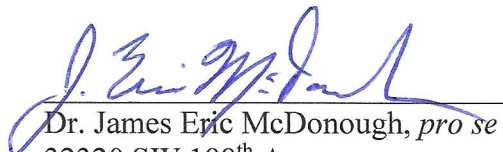
PLAINTIFF'S SUPPLEMENTAL DOCUMENTS FOR APRIL 5, 2019
DISCOVERY HEARING

Pro se Plaintiff hereby files this packet of documents to the Honorable Judge Rebull for
the discovery hearing scheduled for April 5, 2019 in the above styled case.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this packet of documents has been served
by email on counsel for Defendants, Matthew Mandel at MMandel@WSH-law.com on this 29th
day of March 2019.

Respectfully submitted,



Dr. James Eric McDonough, *pro se*
32320 SW 199th Ave
Homestead, FL 33030
Phone: (571) 245-5410
Email: Phd2b05@gmail.com

SUPPLEMENTAL INDEX OF DOCUMENTS FOR APRIL 5, 2019 HEARING
IN PUBLIC RECORDS CASE NO. 17-017515

- 8) Plaintiff's Reply to City's Response in Opposition to Plaintiff's Motion for Order to Show Cause and Sanctions.
 - a) Exhibit A – Invoice Showing Zeskind transacts business in person in Miami-Dade.
 - b) Exhibit B – Verified Return of Service and Subpoena for Elizabeth Sewell.
 - c) Exhibit C – Partial Transcript of October 18, 2018 hearing.
 - d) Exhibit D – Email showing Plaintiff conferring in good faith to set the depositions.
 - e) Exhibit E – Email showing opposing counsel's claim of right to take deposition due to Plaintiff's participation in written discovery.
- 9) Defendant's response to Plaintiff's Request for Admissions.
- 10) Defendant's unsworn response to Plaintiff's Interrogatories.
- 11) Defendant's Request for Admissions.
- 12) Defendant's Interrogatories.

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA**

DR. JAMES ERIC MCDONOUGH, A.K.A.
DOC JUSTICE, Individually and in his
capacity as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,
Plaintiff,

CASE NO: 17-017515 CA (5)

vs.

CITY OF HOMESTEAD,
a Florida municipal corporation,
Defendant,

**PLAINTIFF'S REPLY TO CITY'S RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION FOR ORDER TO SHOW CAUSE AND SANCTIONS**

Pro se Plaintiff, Dr. James Eric McDonough, hereby files this reply to City's Response in Opposition to Plaintiff's Motion for Order to Show Cause and Sanctions, and states the following:

PRELIMINARY STATEMENT

Throughout the litigation of this action Defendant and Defendant's counsel have been less than candid about the facts and law. This reply will demonstrate further instances of such, and further demonstrate the necessity of this Court imposing sanctions upon Defendant and/or Defendants counsel for the dishonesty displayed in attempting repeatedly to mislead this Court. This is not to mention the myriad delays created by opposing counsel, and six other lawyers, while churning this case for all that it is worth, billing over \$164,000 tax dollars so far in the process.

ARGUMENT

I. Zeskind Can be Compelled to Appear for Deposition in Miami-Dade County.

Defendant does not dispute that Samuel Zeskind ("Zeskind") was properly served, but only argues that Zeskind neither resides in nor is employed in Miami-Dade County, and as such cannot be compelled to appear for deposition in Miami-Dade County.

Opposing counsel, Matthew Mandel, tends to make an issue of every small and minor technical mistake that Plaintiff as a *pro se* makes, Plaintiff believes this is because opposing counsel cannot successfully argue the actual merits and facts of the case. However, conversely, opposing counsel would simultaneously ask this court to overlook his glaring and willful misrepresentations which for a professional attorney with approximately two decades of litigation experience are inexcusable.

Fla. R. Civ. P. 1.410(e)(2) holds:

A person may be required to attend an examination only in the county wherein the person resides or is employed or transacts business in person or at such other convenient place as may be fixed by an order of court.

Zeskind, as a licensed attorney, has worked on and attended every single hearing in this case, including the most recent hearing on October 18, 2019. Such can be seen in the invoices in which Zeskind has billed Defendant City of Homestead. See **Exhibit A** attached hereto. As such, it is undisputable that Zeskind **transacts business in person** in Miami-Dade County.

Opposing counsel has also attended every hearing in this case standing beside Zeskind and must be aware of this fact. Additionally, opposing counsel is also surely aware of the rules of civil procedure particularly 1.410(e)(2) as his entire argument relies upon it, though he conveniently fails to cite it.

Opposing counsel would cite *Aero Costa Rica, Inc. v. Dispatch Services, Inc.*, 710 So. 2d 218, 219 to support the position that Zeskind cannot be compelled attend a deposition in Miami-Dade. However, while Mr. Mandel would chastise Plaintiff for his citations of law, Mr. Mandel with access to training, resources, and search tools unavailable to Plaintiff apparently fails to even read the sections which he cites. For example *Aero* stated: “the deposition of a non-resident officer of a **non-resident corporate defendant**. . .” showing it is inapposite as the City of Homestead is clearly NOT a non-resident corporate defendant of Miami-Dade County.

Accordingly, Zeskind CAN be compelled to appear for deposition in Miami-Dade County, and Defendant has failed to show that Zeskind was not properly subpoenaed. Therefore, Zeskind, Defendant, and/or Defendants counsel should be sanctioned for the failure to appear.

II. Sewell was Properly Served.

Opposing counsel begins his argument that Sewell was not properly served by attempting to impugn the integrity of the Plaintiff by claiming that Plaintiff deliberately failed to attach the subpoena because Sewell was not served personally. It must be noted that opposing counsel has repeatedly chastised Plaintiff for attaching too many exhibits, and now chastises Plaintiff for not attaching enough. However, Plaintiff never tried to hide the subpoena and personally filed the return of service by hand. Further, the subpoena shows that the person who accepted service wrote on and signed it stating that they were authorized to receive documents. Further still, the affidavit accompanying the return of service states that this person claimed that they were authorized to accept service for Sewell. See **Exhibit B** attached hereto. If such argument was truly a valid claim it is telling that opposing counsel failed to make the same argument as to the service upon Zeskind.

Opposing counsel chastises Plaintiff for his citation of *CB Condominiums, Inc. v. GRS South Florida*, 165 So 3d 739 (Fla. 4th DCA 2015), but tellingly fails to address the other citations of law and rules made by Plaintiff. As usual opposing counsel projects his faults and misgivings as a trained, licensed and seasoned attorney upon the *pro se* Plaintiff.

In addition, opposing counsel cites *Aero Costa Rica*, 710 So. 2d at 219 to support his position. Yet, opposing counsel has either: a) failed to read this case; or b) is again attempting to deliberately mislead this Court. In *Aero* the deponent lived in Costa Rica. As such the deponent was not just a non-resident of Miami-Dade County and the State of Florida, the deponent was a non-resident of the United States of America. Additionally, opposing counsel relies upon

Hauser v. Schiff, 341 So. 2d 531, 531-32 (Fla. 3d DCA 1977) (holding that substituted service at defendant's place of business was insufficient where the summons and complaint was merely left with defendant's secretary). However, therein the process server merely left the documents and "failed to inform the secretary of the contents of the papers." *Id.* In contrast the affidavit provided with the return of service shows that Monica Leon-Herrera "stated [she was] authorized to accept service for ELIZABETH SEWELL, MMC," and the person performing service "informed said person of the contents therein, in compliance with Florida State statutes."

Opposing counsel is again shown to be committing the same error he accuses the *pro se* Plaintiff of. Furthermore, the service was proper, and Sewell willfully failed to appear for deposition through improper instruction and interference of opposing counsel. Therefore, Sewell, Defendant, and/or Defendants counsel should be sanctioned for the failure to appear.

III. Opposing Counsel's "Relevant Procedural Background" Lacks Candor.

A. All Claims for Declaratory and injunctive Relief were Not Dismissed with Prejudice.

Opposing counsel disingenuously argues that "Plaintiff's claims for declaratory and injunctive relief, were dismissed, with prejudice." First, it must be noted that opposing counsel failed to file with and attach a copy of the October 18, 2018 hearing as ordered by this Court. Additionally, while Plaintiff's claims including claims for declaratory and injunctive relief were dismissed against the WSH Defendants, City of Homestead employees, and City of Homestead; there was an exception to this for claims against the City of Homestead for redaction of video and overbilling, which is shown not only in the Order, but also in the partial transcript which opposing counsel provided Plaintiff. Sadly, Judge Rebull overestimated opposing counsel's integrity stating "I'm sure they will accurately memorialize my ruling." See **Exhibit C** attached hereto.

However, opposing counsel's continued allegation that all claims for declaratory and injunctive relief were dismissed with prejudice is a knowing false statement and combined with

the other false statements made borders on if not crossing well into fraud upon the court territory. Therefore, Defendant and Defendants counsel should be sanctioned for the failure to appear also.

B. Opposing Counsel Failed to Confer in Good Faith to Set the Depositions.

Opposing counsel takes issue with Plaintiff a single time not responding within four days, when conferring to transfer the case, but fails to mention that two of those days were on the weekend. Plaintiff in every other instance has immediately responded to all emails from opposing counsel. Opposing counsel, however, regularly fails to respond for weeks and/or months to message sent by Plaintiff if he even responds at all.

Opposing counsel argues that Plaintiff set the depositions unilaterally. However, opposing counsel conveniently neglects to mention that Plaintiff contacted him and the deponents in good faith to confer on setting dates for the depositions, and opposing counsel wholly failed to respond as he often does. Opposing counsel's strategy is to delay every step as much as possible as seen when he took six months to comply with a simple order from this Court.

When Plaintiff attempted to confer with opposing counsel and the deponents on January 24, 2019, no response was ever provided, and the attempt noted that "If I do not hear back from you or Mr. Mandel by the 4:pm on Monday January 28, 2018, it will be understood and agreed by all parties that you have no intention of cooperating with scheduling these depositions, and I will move forward with scheduling them for a time most convenient for me." See **Exhibit D** attached hereto.

Further, opposing counsel did not file his Motion for Protective Order until after the Notice of Depositions had been served, and after Zeskind has been subpoenaed. Opposing counsel likes to pretend that the mere filing of a Motion for Protective Order is equivalent to one actually being granted. However, opposing counsel understands a subpoena cannot be ignored without prior action of the Court. Furthermore, the judge or case being transferred does not stay discovery.

Lastly, opposing counsel argues that he informed Plaintiff that the deponents would not appear, and that he would set his Motion for Protective Order as soon as the case was transferred. However, opposing counsel failed to attempt to set the hearing until being chided by Plaintiff.

IV. Opposing Counsel's "Preliminary Statement" Lacks Candor.

Opposing counsel claims in the Preliminary Statement that "there are no factual issues left to resolve." However, opposing counsel conveniently neglects to mention that after Plaintiff filed his Motion for Summary Judgment that Defendant filed an answer and affirmative defenses, therein all of Plaintiff's facts and allegations were denied, and claims going after Plaintiff for attorney fees was made. Opposing counsel also conveniently neglects to mention that Plaintiff contests the factual allegations made in Defendant's Motion for Summary Judgment. Therefore, hearing the summary judgment motions would be premature before first finishing discovery.

Opposing counsel asserted to Plaintiff that as he had participated in written discovery that Defendant had a right to take his deposition. See **Exhibit E** attached hereto. However, Defendant also participated in written discovery both in propounding its own and responding to Plaintiff's. Was opposing counsel not acting in good faith then, or not acting in good faith now, or both?

What is obvious is that Plaintiff immediately responded to Defendant's discovery request in good faith. Whereas, Defendant stalled in responding to Plaintiff's discovery until the last minute, did NOT respond in good faith, and once its own discovery was complied with and completed moved to block Plaintiff from any further discovery.

It must also be noted that: Defendant's propounded discovery was not needed or used in their Motion for Summary Judgment; Defendant used discovery to attempt to make a claim against Plaintiff but refuses Plaintiff discovery to defend the scandalous allegations made by opposing counsel; and Defendant while calling Plaintiff's original Motion for Partial Summary Judgment premature until the completion of discovery now takes the opposite position that Plaintiff desires

discovery. Throughout the entire litigation opposing counsel while acting in bad faith has deemed that what is good for the goose is not good for the gander, and has attempted to turn FS. 119 et seq. completely upon its head by demanding private personal records and communications of Plaintiff, while simultaneously blocking Plaintiff from access to public records and communications. Further, opposing counsels conduct has done little other than to repeatedly create undue delays, frustrate Plaintiff's ability to obtain justice, and increase the burden on this Court.

SYNOPSIS

To put this matter into prospective, this is simply an "open records" case that Plaintiff was forced to file in order to compel Defendant to allow access to public records. FS. 119.01(a) provides that "It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency". FS. 119.07(1) states that "Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records". Under FS. 119.10 IT IS CRIME TO VIOLATE THIS PROVISION.

What this Court has witnessed so far is the ludicrous extent that the City of Homestead, and its unethical attorneys are willing to go to CRIMINALLY block, obfuscate and hinder the Plaintiff from "inspection and copying" of the requested records "at any reasonable time". EVERYTHING that we have gone through up until this very moment has been an intentional and willful violation of FS. 119 et seq., and Defendant's unethical attorneys are taking these actions for the sole purpose to block the intent, spirit and "openness" of public records provided by the Florida Constitution and Statutes.

All of the actions taken by the City of Homestead and their lawyers to this very moment are nothing more than a criminal retaliation and a punishment against the Plaintiff for daring to

request public records that the City of Homestead does not want the public to see. These acts by both Defendant and their unethical attorneys are criminal according to FS. 119.10 which states:

Any public officer that knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Clearly both the Defendant's custodian of records and attorneys are "public officers," where the unethical attorneys are "officers of the court" as well, and are subject to the sanctions and remedies for this blatant refusal to openly provide public records to the Plaintiff. These include "Impeachment" and a criminal prosecution under this Statute. It is the Plaintiff's position at this time, that the Defendant's attorneys are literally committing a crime right in front of this Court under FS. 119.10 by directly failing and refusing to "permit the records to be inspected and copied at a reasonable time" and that their actions make them complicit in these crimes with Defendant.

While within this action, I have no standing to request a criminal prosecution, I do ask that this Court use in its arsenal of sanctions, the statutory ability to "suspend", "remove" and impeach all of those involved, and more specifically, each attorney that has conspired in this action with Defendant to eviscerate the Plaintiff's legal rights under FS. 119 et seq.

Furthermore, by not taking action to stop these frivolous and stubbornly litigious actions on the part of counsel for Defendant, this Court is enabling both Defendant, and their unethical attorneys to "sanction" the Plaintiff with no means of redress or court approval by forcing and requiring him to ride this carousel of revolving frivolous and litigious motions, pleadings, filings, hearings and delays. The Court becomes complicit in these sanctions by permitting these delays and frivolous filings, which Plaintiff has shown time and again to be baseless and without merit.

In permitting and allowing Defendant and their unethical attorneys to drag this simple public records request out to this extent, it is permitting Defendant to not only illegally block access to public records, but also to punish, retaliate and financially harm anyone, including Plaintiff for

daring to expect them to follow FS. 119 et seq., and abide by the spirit, intent and plain meaning of this law. By allowing Defendant and their counsel to drag these issues out to the extent they have, this Court has permitted Defendant to lash this Plaintiff to a public records flogging pole and whip him mercilessly without redress.

Conversely, the City of Homestead and their attorneys have stolen from the taxpayers over \$164,000 and intend to steal a lot more to fight the public from obtaining records. These attorneys have a double edged "win-win" situation whereby every stupid thing they argue, they get to steal more taxpayer dollars, and cost this Plaintiff additional lost time away from his family and economic hardship. This Court, in failing to sanction Defendants and their attorneys and stop this abuse has been aiding and assisting these unethical entities in their fraud upon the people of the City of Homestead, while at the same time teaching these criminals that it pays handsomely to violate open records laws.

Therefore, Plaintiff requests that this Court "even the playing field" by awarding from the Defendants and their attorneys directly, the "reasonable costs of enforcement" to include the lost time based on an hourly rate required to work on this case equal to the hourly rate of pay the Plaintiff would have normally been able to earn had he not been dragged through this fraudulent process. A failure to do so by this Court would only serve to render FS. 119 et seq. worthless and ineffective when municipalities like the City of Homestead can punish John Q. Public by making every single one of them have to go through this same process whenever a government agency intentionally refuses to provide public records.

FS. 119 is a powerful open records law with one major and in my opinion, intentional flaw. It has near ZERO government enforcement. Effectively, the ONLY entity that is permitted under this law to hold government agencies accountable is a civil action by a citizen like the Plaintiff. If courts allow corrupt entities to ignore FS. 119 et seq. and punish to this extent any citizen that

dares to hold them accountable for this fraudulent and criminal conduct, then there is NO meaningful enforcement of Florida's open records laws. The only way to prevent this widescale violation of FS. 119 et seq. is to allow those forced to go through this fraudulent practice to recover the true full costs of having to enforce this law, including transportation costs and lost income, while at the same time sanctioning Defendant's attorneys from being paid a single dime of taxpayer money and suspending, removing and or impeaching the City of Homestead's custodian of records. Only then will FS. 119 et seq. have any meaningful enforcement and only then will corrupt government agencies like the City of Homestead willingly and voluntarily comply.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court find in favor of Plaintiff's Motion for Order to Show Cause and Sanctions, and issue effective monetary and non-monetary sanctions which will halt the current abuse and prevent future occurrences.

Respectfully submitted,

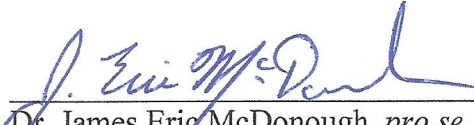

Dr. James Eric McDonough, *pro se*
32320 SW 199th Ave
Homestead, FL 33030
Phone: (571) 245-5410
Email: Phd2b05@gmail.com

[Certificate and Service and Verification Page Follows]

CERTIFICATE OF SERVICE

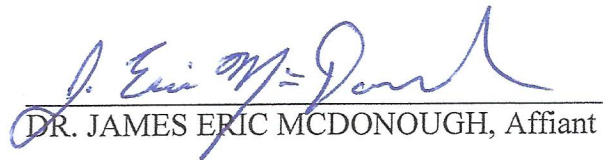
I hereby certify that a true and correct copy of this motion has been served by email on counsel for Defendants, Matthew Mandel at MMandel@WSH-law.com on this 29th day of March 2019.

Respectfully submitted,


Dr. James Eric McDonough, *pro se*

VERIFICATION AND SIGNATURE PAGE

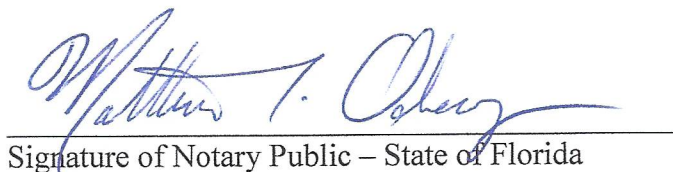
As Affiant, I, Dr. James Eric McDonough, hereby declare under penalty of perjury that the above facts are true and correct to the best of my knowledge and ability. Further, Affiant sayeth not.



DR. JAMES ERIC MCDONOUGH, Affiant

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this 29th day of March 2019 by Dr. James Eric McDonough.


Signature of Notary Public – State of Florida


Name of Notary, Typed, Printed or Stamped

Known ☒ OR Produced Identification _____

Type of Identification Produced _____



EXHIBIT A

**WEISS SEROTA HELFMAN
COLE & BIERMAN. P.L.**

2525 Ponce de Leon Boulevard

Suite 700

Coral Gables, Florida 33134

305-854-0800

Fax 305-854-2323

Tax ID No. 20-8112403

City of Homestead
100 Civic Court
Homestead, FL 33033

December 3, 2018
Invoice # 210336
Page 1 of 4

CLIENT: 0031 - Homestead, City of
Re: 496 McDonough, Dr. James - Public Records Complaint

For Professional Services Rendered

Date		Services	Hours	Amount
10/16/18	siz	Review, Revise, Finalize And File Joint Reply In Further Support Of Motions To Dismiss Third Amended Complaint	1.00	217.06
10/17/18	siz	Continue Preparation For Upcoming Special Set Hearing On Motions To Dismiss Third Amended Complaint	2.30	499.24
10/17/18	mhm	Preparation For Hearing On Motions To Dismiss	2.50	542.65
10/17/18	mhm	Review And Analyze [REDACTED]	1.70	369.00
10/17/18	mhm	Attend To Pending Matters	1.40	303.88
10/18/18	siz	Prepare For And Attend Special Set Hearing On Motions To Dismiss Third Amended Complaint; Debrief Re [REDACTED]	5.70	1,237.24
10/18/18	mhm	Prepare For And Attend Hearing And Analyze [REDACTED]	2.00	434.12
10/18/18	mhm	Prepare For And Attend Hearing On Motion To Dismiss	4.50	976.77
10/18/18	mhm	Update Client Re [REDACTED]	0.50	108.53
10/18/18	mjp	Conference Concerning [REDACTED]	0.80	173.65
10/19/18	siz	Draft Proposed Orders On Motions To Dismiss Third Amended Complaint	0.90	195.35
10/19/18	siz	Tend To Defense Issues	0.50	108.53
10/19/18	mjp	Analyze Issues Re [REDACTED]	0.60	130.24
10/19/18	mjp	Conference Concerning [REDACTED]	0.30	65.12
10/22/18	mhm	Attend To Post Hearing Issues	0.70	151.94
10/22/18	mjp	Analyze Issues Re [REDACTED]	0.60	130.24
10/23/18	siz	Tend To Defense Issues	0.30	65.12
10/23/18	mhm	Attend To Proposed Orders	0.60	130.23
10/24/18	egg	Review And Revise Proposed Orders Re Defense Motions To Dismiss; Confer Re [REDACTED]	0.30	65.12

EXHIBIT B

VERIFIED RETURN OF SERVICE

State of Florida

County of Miami-Dade

Circuit Court

Case Number: 17-017515 CA (13) Deposition Date: 2/27/2019 11:00 am

Plaintiff

DR. JAMES ERIC MCDONOUGH, A.K.A. DOC JUSTICE, individually and
in his capacity as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,

vs

Defendant

CITY OF HOMESTEAD a Florida municipal corporation

For

James Eric McDonough (Pro Se)
32320 SW 199th Ave
Homestead, FL 33030

Received by Matthew T. Oakey on the 21st day of February 2019 at 9:00am, to be served on:

ELIZABETH SEWELL, MMC

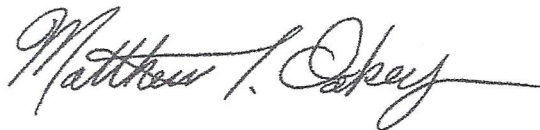
CUSTODIAN OF RECORDS, OFFICE OF THE CITY CLERK, 100 CIVIC COURT, HOMESTEAD, FL 33030

I, Matthew T. Oakey, do hereby affirm that on the 21st day of February 2019 at 2:07pm, I served an AUTHORIZED entity by delivering a true copy of the SUBPOENA DUCES TECUM FOR DEPOSITION with the date of service written thereon, to: MONICA LEON-HERRERA as ADMINISTRATIVE ASSISTANT at the address of: OFFICE OF THE CITY CLERK, 100 CIVIC COURT, HOMESTEAD, FL 33030 who stated they are authorized to accept service for ELIZABETH SEWELL, MMC, and informed said person of the contents therein, in compliance with Florida State statutes.

Description of Person Served:

Age: 30s. Sex: F Race/Skin Color: WHITE Height: 5'6 Weight: 140 Hair: BROWN Glasses: N

Under penalty of perjury, I declare that I have read the foregoing and that the facts stated in it are true, that I am a Florida State Commissioned Notary Public in the County in which this defendant/witness was served and have no interest in the above action. Pursuant to FS 92.525(2), no notary is required.



Matthew T. Oakey
Commission #GG080788
100 NE 6th Ave Lot 706
Homestead, FL 33030
(786) 246-5199
Job Number: SC-2019.02.21

FILED FOR RECORD
2019 MAR 11 PM 1:24
CLERK
CIRCUIT & COUNTY COURTS
MIAMI-DADE COUNTY, FL
MAR 20 2019

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 17-017515 CA (13)

CIVIL DIVISION

DR. JAMES ERIC MCDONOUGH, A.K.A.
DOC JUSTICE, Individually and in his
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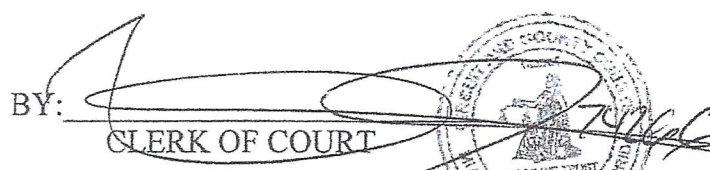
SUBPOENA DUCES TECUM FOR DEPOSITION

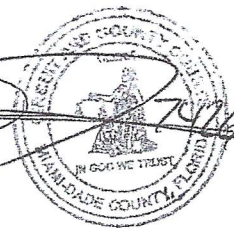
FROM: Dr. James Eric McDonough,
32320 SW 199th Ave.
Homestead, FL 33030
phd2b05@gmail.com

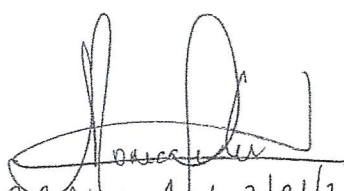
TO: **Elizabeth Sewell**
100 Civic Court
Homestead, FL 33030

YOU ARE COMMANDED to appear before a person authorized by law to take depositions at 50 NW 15th Street, Suite 110, Homestead, FL 33030 on **February 27, 2019 at 9:00 AM** for the taking of your deposition in this action. If you fail to appear, you may be in contempt of court. You are subpoenaed to appear by Dr. James Eric McDonough, pro se Plaintiff, and unless excused from this subpoena by this Plaintiff or the court, you must respond to this subpoena as directed.

DATED FEB 05 2019

BY: 
CLERK OF COURT




C.C. Admin. Asst. 2/21/2019.
authorized to receive documents.

Any minor subpoenaed for testimony has the right to be accompanied by a parent or guardian at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact [identify applicable court personnel by name, address, and telephone number] at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

EXHIBIT C

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CASE NO. 2017-017515 CA (30)

DR. JAMES ERIC McDONOUGH, individually and
in his capacity as an investigative journalist
for PHOTOGRAPHYISNOTACRIME.com,

Plaintiff,

-vs-

ERIC STETTIN, individually and in his capacity
as attorney for the City of Homestead, et al.,

Defendants.

JUDGE REBULL'S RULING

DATE TAKEN October 18, 2018
TIME: 2:00 P.M. - 3:50 P.M.
PLACE: 73 West Flagler Street
 Miami, Florida 33130
BEFORE: THE HONORABLE THOMAS REBULL

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were reported by:

Examination of the witness taken before:
Laurie Susskind, Registered Professional Reporter
 United Reporting, Inc.
 1218 Southeast 3rd Avenue
 Fort Lauderdale, Florida 33316
 954-525-2221

APPEARANCES FOR THE PLAINTIFF

DR. JAMES ERIC McDONOUGH, pro se

APPEARANCES FOR THE DEFENDANT

WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.

By: MATTHEW H. MANDEL, ESQ. and

SAMUEL I. ZESKIND, ESQ.

200 East Broward Boulevard, Suite 1900

Fort Lauderdale, Florida 33301

- - - - -

1 Thereupon, the following proceedings were had:

2 * * * *

3 THE COURT: Thank you.

4 Obviously, an enormous amount of work has
5 gone into this on the part of both sides, so
6 very well-researched and argued.

7 With respect to the motion, what I'll call
8 Defendants, Eric Stettin and others, that
9 motion with that title, I'm granting that
10 motion with prejudice.

11 With respect to the motion that begins
12 with the title Defendants, Alexander Rolle and
13 others, I guess the City employees' motion, I'm
14 also granting that motion with prejudice.

15 With respect to the City of Homestead's
16 motion, I'm granting the request -- excuse me,
17 I'm granting the motion, except as it relates
18 to Requests 4 and 6, which is the video issue
19 that we have been discussing, and except as it
20 relates to the amounts of charges that the
21 Plaintiff is contesting as to their
22 reasonableness and the amounts, and that would
23 include dismissal with prejudice of the
24 injunctive relief and declaratory relief
25 claims, except to the extent that we are

1 talking about those issues, the redactions and
2 the excessive charges.

3 So I'm going to ask the movant to prepare
4 a proposed order -- proposed orders, one for
5 each motion on the three motions. Obviously,
6 send it to Dr. McDonough for his review prior
7 to submitting them to me.

8 I am going to ask you to submit them,
9 please, by the emergency motion category in
10 E-Courtesy, in Word format, and I'll take a
11 look at them and, hopefully, they -- I'm sure
12 they will accurately memorialize my ruling.

13 MR. MANDEL: If we just sent for the
14 reasons stated on the record or do you actually
15 want us to elaborate exactly what you said? I
16 mean, I can have the court reporter type it up.

17 THE COURT: You can say for the reasons
18 and incorporate the transcript of proceedings
19 dated October 18, 2018.

20 MR. MANDEL: Thank you, Judge.

21 THE COURT: Thank you.

22 (Whereupon, the hearing was concluded at
23 3:50 p.m.)
24
25

C E R T I F I C A T E

THE STATE OF FLORIDA)
COUNTY OF BROWARD)

I, LAURIE SUSSKIND, Registered Professional
Reporter, State of Florida at large, certify that I
was authorized to and did stenographically report
the foregoing proceedings and that the transcript is
a true and complete record of my stenographic notes.

Dated this 19th day of October, 2018.

Laurie Susskind
LAURIE SUSSKIND, R.P.R.



EXHIBIT D



Eric McDonough <phd2b05@gmail.com>

Dates for deposition

Eric McDonough <phd2b05@gmail.com>

Mon, Mar 11, 2019 at 12:56 AM

To: Eric & Vanessa McDonough <phd2b05@gmail.com>

----- Forwarded message -----

From: **Eric McDonough** <phd2b05@gmail.com>

Date: Thu, Jan 24, 2019 at 11:07 AM

Subject: Dates for deposition

To: Elizabeth Sewell <ESewell@cityofhomestead.com>, Samuel I. Zeskind <SZeskind@wsh-law.com>

Cc: Matthew H. Mandel <MMandel@wsh-law.com>

Hello Elizabeth and Sam,
I hope you are both well.

I would like to take both of your depositions, it will take about 2 hours or less each. Please kindly provide three dates between February 5, 2019 and March 5, 2019 which you would be available to have your depositions taken. Mr. Mandel was e-mailed about this matter this morning.

If I do not hear back from you or Mr. Mandel by the 4:pm on Monday January 28, 2018, it will be understood and agreed by all parties that you have no intention of cooperating with scheduling these depositions, and I will move forward with scheduling them for a time most convenient for me.

Thank you

Dr. James Eric McDonough

EXHIBIT E



Eric McDonough <phd2b05@gmail.com>

Scheduling Hearing

Matthew H. Mandel <MMandel@wsh-law.com>

Fri, Jan 25, 2019 at 6:13 PM

To: "Eric McDonough (phd2b05@gmail.com)" <phd2b05@gmail.com>

Hello Dr. McDonough,

Thanks for your email.

As you have filed a motion for summary judgment and have asserted that there are no factual issues, we do not see how or why you would need any discovery, much less the depositions of the Ms. Sewell and the City's litigation counsel, Sam Zeskind.

As for your deposition, Judge Diaz merely stayed all discovery pending the transfer issue. Now that it has been transferred to Judge Rebull, and you have amended your complaint several times since it has been transferred as well as having participated in the exchange of written discovery, we certainly are entitled to take your deposition. However, in light of your recent discovery responses (and we thank you for responding so quickly), we too will be filing our own motion for summary judgment and will not be pursuing your deposition at this time.

What we suggest is that once our motion is filed (sometime next week), we contact the JA to get at least a 1 hour hearing time slot to hear both your motion as well as the City's motion. If, after the hearing, any of the case survives, we can then address the issue of the need to take any depositions.

Please note that I will be out of the office until late Tuesday afternoon.

I wish you a nice weekend.

Best regards.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DR. JAMES ERIC MCDONOUGH, A.K.A,
DOC JUSTICE, individually and in his capacity
as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,

CASE NO.: 17-17515 CA (13)

Plaintiff,

vs.

CITY OF HOMESTEAD,
a Florida municipal Corporation,

Defendant.

**CITY OF HOMESTEAD'S RESPONSES AND
OBJECTIONS TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS**

Defendant, City of Homestead ("City"), by and through its undersigned counsel hereby
files its Response and Objections to the Request for Admissions propounded by Plaintiff, Dr.
James Eric McDonough, A.K.A. Doc Justice ("Plaintiff").

GENERAL OBJECTIONS

The City objects to the Requests to the extent they seek information protected from
disclosure by the attorney-client privilege, the work product doctrine, the accountant-client
privilege, the common interest privilege or any other privilege or protection from disclosure
provided by law. The inadvertent disclosure of privileged or protected information shall not
constitute a waiver of any applicable privilege or protection from disclosure.

SPECIFIC RESPONSES AND OBJECTIONS

1. Admit that the CITY did not provide copies of electronic records as requested for REQUEST 3 of the initial complaint, filed November 2, 2016, until after the July 31, 2017 hearing.

RESPONSE:

The City objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as all claims relating to Request 3 have been dismissed from this lawsuit.

2. Admit that CITY, through its attorneys, did not provide records responsive to REQUEST 1 of the initial complaint, filed July 9, 2017, until after the July 31, 2017 hearing.

RESPONSE:

The City objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as all claims relating to Request 1 have been dismissed from this lawsuit.

3. Admit that CITY, through its attorney Sam Zeskind, in a motion to compel filed on December 20, 2017, which claimed on page 8 that **"McDonough has stated that he intends to write a book on how to harass government entities with public records requests and prevail in court on the subsequent lawsuits"** to support CITY's position that Dr. McDonough had filed the records requests for an improper purpose.

RESPONSE:

The City objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

4. Admit that attached screenshot, Exhibit A, is a true and correct copy of the only evidence CITY, through its attorney Sam Zeskind, was able to produce to support a claim that Dr. McDonough has made any statements about harassing government with public records or an intent to teach other how to do such.

RESPONSE:

The City objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

5. Admit that CITY has no evidence that Dr. McDonough ever actually made any statements of intent to harass government with public records request or to teach others how to do such through the writing of a book or otherwise.

RESPONSE:

The City objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

6. Admit that FS. 119.12(3) does not apply to records request filed before July 1, 2017.

RESPONSE:

The City objects to the request as it impermissibly seeks a legal conclusion. Notwithstanding the foregoing objection, denied. Section 119.12(3) became effective on May 23, 2017. As such, section 119.12(3) applies to all records requests submitted on or after May 23, 2017.

7. Admit that none of the request for records in the initial complaint or the Fourth Amended Complaint, were filed on or after July 1, 2017.

RESPONSE:

The City admits that none of the requests for records that are the subject of the Fourth Amended Complaint were submitted after July 1, 2017. The City further admits that none of the requests that were the subject of the initial complaint were submitted after July 1, 2017. However, Request 1 was submitted after May 23, 2017.

8. Admit that Dr. McDonough, though not required to do such, sent follow up emails to CITY about the requests (i.e. REQUEST 1, REQUEST 2 and REQUEST 3) in the initial action without production of records, before filing suit.

RESPONSE:

The City objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

9. Admit that Dr. McDonough has repeatedly warned CITY since at least 2015, that it was in violation of the records law which would lead to litigation if not corrected.

RESPONSE:

The City objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

10. Admit that the 53,000 Facebook posts CITY found were responsive to REQUEST 5, were already publicly published to the Police Department's Facebook page.

RESPONSE:

The City objects to this request as it lacks foundation and predicate in that it assumes that the 53,000 records responsive to Request 5 were all Facebook "posts." Notwithstanding the foregoing objection, and without waiving same, denied.

11. Admit that even after clarifying that it was not the 53,000 Facebook posts he wanted, the City never changed the invoice to reflect the change or provided any records.

RESPONSE:

Denied.

12. Admit that CITY has a had a policy of charging a fee of \$45.45/hour when information technology services "ITS" are required in the production public records, for more than five (5) years.

RESPONSE:

The City admits that, for several years, it charged \$45.45 per hour for IT services, where necessary, in responding to public records requests. The City denies that the charging of this rate was a "policy."

13. Admit that there is no combination of salary and/or benefits totaling a cost of \$45.45/hour to CITY to search emails during the period of which Dr. McDonough has been filing requests.

RESPONSE:

Denied.

14. Admit that CITY, through its attorneys, admitted at the July 31, 2017 hearing that the full five (5) hour charge for ITS time related to REQUEST 2 was not work done by or requiring by ITS services.

RESPONSE:

The City admits that the five hours of work indicated on the invoice provided by the City to Plaintiff in response to Request 2 was not all for IT services. The City mistakenly charged Plaintiff for 5 hours of time at the IT rate when the 5 hours also included time for staff to review and compile the responsive records and for review and redaction of the records by the City's attorneys. Had the invoice been prepared more accurately, the cost would have exceeded the amount actually charged.

15. Admit that CITY operates under a policy that video footage can be redacted to exclude, from view, police officers acting in public.

RESPONSE:

The City objects to this request as vague and ambiguous.

16. Admit that CITY claims this exemption to redact video under FS. 119.071(4)(d).

RESPONSE:

The City objects to this request as vague and ambiguous.

17. Admit the only case law possessed by CITY supporting redaction of video is *Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010).

RESPONSE:

The City objects to this request as it impermissibly seeks a legal conclusion. The City further objects to this request as it impermissibly seeks work-product protected information.

18. Admit that the holding of *Rameses* upheld redaction video was appropriate under FS. 119.071(4)(c), for information revealing undercover personnel, not under FS. 119.071(4)(d).

RESPONSE:

The City objects to this request as it impermissibly seeks a legal conclusion.

19. Admit that INVOICE 4, totaling \$441.95, was sent to Dr. McDonough by CITY in response to REQUEST 4, on September 10, 2014.

RESPONSE:

The City objects to this request as vague and ambiguous as there is no "INVOICE 4" defined in the Fourth Amended Complaint. Notwithstanding the foregoing objection and without waiving same, to the extent this request refers to "INVOICE 4-1", denied.

20. Admit that at the October 18, 2018 hearing City, through its attorney, claimed that the time (i.e. 17.25 hours) to review the requested dashcam of REQUEST 4 was required because the city reviewed or had to review 24 hours of video.

RESPONSE:

The City objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

21. Admit that REQUEST 4 was specific to "copies of all documents [and] recordings for arrest taking place on 7/10/2014@ 19:36 hrs. by Off. Murguido ... "

RESPONSE:

The City objects to this request as vague and ambiguous as there is no "REQUEST 4" defined in the Fourth Amended Complaint. Notwithstanding the foregoing objection and without waiving same, to the extent this request refers to "REQUEST 4-1", denied.

22. Admit that the majority of the four (4) hours claimed in INVOICE 6 was for redaction of the responsive video.

RESPONSE:

Denied.

23. Admit that CITY has a policy of waiving the first 30 minutes of time in producing records.

RESPONSE:

Admitted.

24. Admit that City has often failed to waive the first 30 minutes of time when producing records for Dr. McDonough.

RESPONSE:

Denied.

25. Admit that CITY has charged Dr. McDonough for paper copies of electronic records when the records were requested to be produced, and already available, in electronic format.

RESPONSE:

Denied.

26. Admit that the email chain, attached as Exhibit B, is a true and correct copy of an email chain sent between Sam Zeskind and Edward Guedes in relation to Case No. 16-12412-CA (01) and/or the appeal of that case.

RESPONSE:

The City objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

27. Admit that the highlighted portions of Exhibit B reference an acknowledgement between attorneys representing CITY that the statute of limitations had run for a claim against CITY.

RESPONSE:

The City objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

28. Admit that as the statute of limitations had run on a claim against the CITY, the exemptions claimed to refuse production of records in REQUEST 2 would no longer be applicable.

RESPONSE:

The City objects to the request as it impermissibly seeks a legal conclusion. The City further objects to this request as it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence as the statute of limitations had not yet run at the time of Request 2. Notwithstanding the foregoing objections and without waiving same, denied.

Respectfully submitted,

**WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.**

Attorneys for City of Homestead

200 East Broward Blvd., Suite 1900

Fort Lauderdale, FL 33301

Telephone: (954) 763-4242

Telecopier: (954) 764-7770

By: s/ Matthew H. Mandel

MATTHEW H. MANDEL

Florida Bar No. 147303

Primary: mmandel@wsh-law.com

Secondary: lbrewley@wsh-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-mail via State E-portal this 15th day of February, 2019 to: **Dr. James Eric McDonough**, *pro se*, 32320 SW 199th Ave, Homestead, FL 33030, Email: Phd2b05@gmail.com.

s/ Matthew H. Mandel

MATTHEW H. MANDEL

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DR. JAMES ERIC MCDONOUGH, A.K.A,
DOC JUSTICE, individually and in his capacity
as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,

CASE NO.: 17-17515 CA (13)

Plaintiff,
vs.

CITY OF HOMESTEAD,
a Florida municipal Corporation,

Defendant.

**CITY OF HOMESTEAD'S NOTICE OF SERVING UNVERIFIED ANSWERS
AND OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendant, City of Homestead ("City"), by and through its undersigned counsel hereby
files its Notice of Serving Unverified Answers and Objections to the First Set of Interrogatories
propounded by Plaintiff, Dr. James Eric McDonough, A.K.A. Doc Justice ("Plaintiff").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished
via E-mail via State E-portal this 15th day of February, 2019 to: **Dr. James Eric McDonough,**
pro se, 32320 SW 199th Ave, Homestead, FL 33030, Email: Phd2b05@gmail.com.

**WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.**
Attorneys for City of Homestead
200 East Broward Blvd., Suite 1900
Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Telecopier: (954) 764-7770

By: s/ Matthew H. Mandel
MATTHEW H. MANDEL
Florida Bar No. 147303
Primary: mmandel@wsh-law.com
Secondary: lbrewley@wsh-law.com

**CITY'S ANSWERS AND OBJECTIONS
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendant, City of Homestead ("City"), through undersigned counsel and pursuant to Rule 1.340, Fla. R. Civ. P., hereby submits its Answers and Objections to the First Set of Interrogatories propounded by Plaintiff, Dr. James Eric McDonough, A.K.A. Doc Justice ("Plaintiff"), and states:

GENERAL OBJECTIONS

1. The City objects to the interrogatories to the extent they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the common interest privilege or any other privilege or protection from disclosure provided by law. The inadvertent disclosure of privileged or protected information shall not constitute a waiver of any applicable privilege or protection from disclosure.
2. The City objects to the Instructions to the extent they are inconsistent with the City's obligations to respond pursuant to the Rules of Civil Procedure.
3. The City objects to the Definitions to the extent they are inaccurate representations of the referenced items.

SPECIFIC RESPONSES AND OBJECTIONS

1. For each request for admissions (served simultaneously with these interrogatories) that you deny or provide a qualified admission, please state all facts supporting such denial or qualified admission. As part of your response, please identify all witnesses with knowledge and/or documents supporting your response.

ANSWER:

No. 10 – All 53,000 records were not public posts as they likely also included messages and other data/records that had not been posted publicly on Facebook.

No. 11 - After Plaintiff advised the City that he did not want the "53,000 Facebook posts," he made two follow-up requests within the same correspondence: (1) "the destruction

logs for the deletions of my comments on the Facebook pages of HPD, the City and the Mayor” and (2) “a copy of the policy allowing for deletion of critical comments.” The City then responded that it did not have any records responsive to these requests.

No. 13 – There are benefits and salary combinations within the IT department that exceed \$45.45 an hour.

No. 19 - The request was made on September 24, 2014 and the invoice is dated October 10, 2014.

No. 21 – The request is not a complete representation of the terms of the request, which identified that it included dashcam footage, radio records, dispatch records, the arrest form, incident report, transport documents, notes, phone records, and every other public records relating to the referenced arrest.

No. 22 - Request 6 included much more than just the video footage of Plaintiff's arrest. Specifically, Request 6 also included: Officer John Monaco's personnel file, IA records, and his time roster for July 27, 2016; Officer Garland Wright's personnel file, IA records; and a list of all police officers on duty and attending City Council meetings in July and August 2016.

No. 28 - While the City agrees that the statute of limitations has run on the claim against the City, the exemptions claimed in responding to Request 2 still apply as the claim, nevertheless remains active. The Notice of Claim that is the basis for these exemptions is the “Notice of Intent to File a Claim” submitted by Plaintiff to the City dated April 21, 2014. The trial court in Case No. 16-012412 held (and the Third DCA affirmed in *City of Homestead v. McDonough*, 232 So. 3d 1069 (Fla. 3d DCA 2017)) that the Notice of Claim and the Murguido Defamation claims were “inextricably intertwined.” As a result, while the Notice of Claim remains active, these exemptions remain in effect. The Notice of Claim is one of the claims that is the subject of the appeal pending in the United States Circuit Court of Appeals for the Eleventh Circuit in *McDonough v. City of Homestead, et al.*, Case No. 18-13263-AA.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DR. JAMES ERIC MCDONOUGH, A.K.A,
DOC JUSTICE, individually and in his capacity
as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,

CASE NO.: 17-17515 CA (13)

Plaintiff,

vs.

CITY OF HOMESTEAD,
a Florida municipal Corporation,

Defendant.

CITY OF HOMESTEAD'S FIRST REQUEST FOR ADMISSIONS TO PLAINTIFF

Defendant, City of Homestead ("City"), by and through undersigned counsel, and pursuant to Rule 1.370, Florida Rules of Civil Procedure, hereby requests that Plaintiff, Dr. James Eric McDonough, A.K.A. Doc Justice, admit the truth of the matters set forth below. The matters set forth below will be considered admitted unless Respondent serves a written answer or objection addressed to the matter within thirty (30) days after service of this request.

DEFINITIONS

Terms not defined herein shall have the meanings ascribed in the Complaint.

1. "McDonough" "You," "Your," or "Plaintiff," refers to Plaintiff, Dr. James Eric McDonough, and also includes any agent, employee, attorney, legal assistant, paralegal, or other person acting or purporting to act, or who acted or purported to act, on behalf of Dr. James Eric McDonough at any time until the present, or during any other indicated period of time.

2. "City," refers to Defendant, the City of Homestead, and any agent, employee or other person acting or purporting to act, or who acted or purported to act, on behalf of the City of Homestead at any time until the present, or during any other indicated period of time.

3. The terms “concern” or “concerning” or any other derivative thereof shall be construed as referring to, responding to, relating to, pertaining to, connected with, comprising, memorializing, commenting on, regarding, discussing, showing, describing, reflecting, analyzing and constituting.

4. The terms “relating to” or “relating thereto” shall mean, directly or indirectly, refer to, mention, describe, concern, pertain to, arise out of or in connection with or in any way legally, logically, or factually connected with the matter discussed.

5. “Complaint” refers to the Fourth Amended Complaint filed by Plaintiff in the case known as *McDonough v. City of Homestead*, filed in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 17-17515 CA (30).

6. Terms not defined herein shall have the meanings defined in the Fourth Amended Complaint.

ADMISSIONS

1. Admit that you wrote the May 26, 2017 article entitled “Florida Man Fights Extensive Public Records Abuse,” which is attached hereto as **Exhibit “A”**.

2. Admit that Exhibit “A” is a true and correct copy of the article.

3. Admit that, in the article attached as Exhibit “A”, You state that You “paid my friend’s invoice picking up ‘his records,’ effectively circumventing the fraudulent invoice.”

4. Admit that You paid the \$18.30 invoice provided to Jason Jensen by the City.

5. Admit that, upon payment of the \$18.30, the City provided You with the responsive records.

6. Admit that on June 2, 2015, You sent the email attached hereto as **Exhibit “B”**.

7. Admit that Exhibit “B” is a true and correct copy of the email.

8. Admit that in the email attached hereto as Exhibit "B", You state that You "did not ask for, nor do I want a copy of the 53,000 Facebook post."
9. Admit that on July 26, 2016, you sent the email attached hereto as Exhibit "C" to Jason Jensen.
10. Admit that Exhibit "C" is a true and correct copy.
- ★ 11. Admit that the "records" referenced in the email attached hereto as Exhibit "C" are the records responsive to Request 2 as defined in the Fourth Amended Complaint.
12. Admit that on July 26, 2016, you sent the email attached hereto as Exhibit "D" to Jason Jensen.
13. Admit that the July 26, 2016 email attached as Exhibit "D" is a true and correct copy.
14. Admit that on July 26, 2016, you sent the email attached hereto as Exhibit "E" to Jason Jensen.
15. Admit that the July 26, 2016 email attached as Exhibit "E" is a true and correct copy.
16. Admit that on or about September 1, 2015, You paid \$325.56 to the City for the personnel file records responsive to Request 7 as defined in the Fourth Amended Complaint.
17. Admit that the City produced to You the IA file records responsive to Request 7 at no charge.
18. Admit that You received a refund of \$28.67 from the City relating to Request 7.
19. Admit that the check attached hereto as Exhibit "F" is a true and correct copy of the refund check you received.

20. Admit that the City has produced to You the unredacted video responsive to Request 4 as defined in the Fourth Amended Complaint.
21. Admit that the City has produced to You the unredacted video responsive to Request 6 as defined in the Fourth Amended Complaint.
22. Admit that You were in possession of the unredacted video responsive to Request 6 prior to October 28, 2017.
23. Admit that You own the Facebook page entitled "True Homestead."
24. Admit that You operate the "True Homestead" Facebook page.
25. Admit that You post messages and/or stories on the "True Homestead" Facebook page.
26. Admit that on or about October 28, 2017, the unredacted video responsive to Request 6 was posted on the "True Homestead" Facebook page.
27. Admit that the City produced to You the records responsive to Request 11 as defined in the Fourth Amended Complaint.
28. Admit that the City produced to You the records responsive to Request 12 as defined in the Fourth Amended Complaint.

Respectfully submitted,

**WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.**

Attorneys for Defendant, City of Homestead
200 East Broward Blvd., Suite 1900
Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Telecopier: (954) 764-7770

By: s/ Matthew H. Mandel

MATTHEW H. MANDEL

Florida Bar No. 147303

Primary: mmandel@wsh-law.com

Secondary: lbrewley@wsh-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-mail via State E-portal this 11th day of January, 2019 to: **Dr. James Eric McDonough**, *pro se*, 32320 SW 199th Ave, Homestead, FL 33030, Email: Phd2b05@gmail.com.

s/ Matthew H. Mandel
MATTHEW H. MANDEL

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DR. JAMES ERIC MCDONOUGH, A.K.A,
DOC JUSTICE, individually and in his capacity
as an investigative journalist for
PHOTOGRAPHYISNOTACRIME.COM,

CASE NO.: 17-17515 CA (13)

Plaintiff,

vs.

CITY OF HOMESTEAD,
a Florida municipal Corporation,

Defendant.

**DEFENDANT CITY OF HOMESTEAD'S NOTICE
OF SERVING FIRST SET OF INTERROGATORIES TO PLAINTIFF**

Defendant, City of Homestead ("City"), by and through its undersigned counsel, propounds the following interrogatories upon Plaintiff, Dr. James Eric McDonough, A.K.A. Doc Justice, to be answered, in writing and under oath, in accordance with Rule 1.340, Florida Rules of Civil Procedure, within thirty days of the date hereof.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-mail via State E-portal this 11th day of January, 2019 to: **Dr. James Eric McDonough**, *pro se*, 32320 SW 199th Ave, Homestead, FL 33030, Email: Phd2b05@gmail.com.

Respectfully submitted,

**WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.**

Attorneys for Defendant

200 East Broward Blvd., Suite 1900
Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Telecopier: (954) 764-7770

By: s/ Matthew H. Mandel

MATTHEW H. MANDEL

Florida Bar No. 147303

Primary: mmandel@wsh-law.com

Secondary: lbrewley@wsh-law.com

INSTRUCTIONS FOR INTERROGATORIES

You must answer each Interrogatory separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer. The answers must be signed by the party making them, and the objections signed by the attorney making them.

Space has been provided below each Interrogatory for your answer. If you require additional space, you may attach an additional sheet or sheets of paper, which refer to the appropriate Interrogatory.

In answering each Interrogatory:

- a. Identify each document, pursuant to the definition of “identify” contained in these Interrogatories, relied upon or which forms a basis for the answer given or which corroborates the answer given or the substance of what is given in answer to each Interrogatory;
- b. State whether the information furnished is within your personal knowledge and, if not, the name of each person to whom the information is a matter of personal knowledge; and
- c. Identify each person who assisted or participated in preparing and/or supplying any of the information given in answer to or relied upon in preparing the answer to each Interrogatory.

Each subpart of an Interrogatory is a separate Interrogatory for objection. If you object, you must object separately to each subpart and must answer all remaining subparts of each numbered Interrogatory. If you object to an Interrogatory or to a subpart thereof, as calling for information beyond the scope of discovery, you must nevertheless answer the Interrogatory or subpart to the extent that it is not objectionable.

In the event an Interrogatory is objected to on the ground of privilege, identify the privilege asserted and the facts on which the assertion is based. If the Interrogatory objected to relates to documents, identify each document pursuant to the definition of “identify” contained in these Interrogatories.

In the event the answer to an Interrogatory is “do not know,” “unknown,” “that information was unavailable,” or the like, explain in detail the efforts made to obtain information to answer the Interrogatory.

If you respond to a request for discovery with a response that is complete when made, these Interrogatories are continuing and as such you are nevertheless under a duty to supplement the response to include information thereafter acquired:

a. with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or to the identity of each person expected to be called as a witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony; and

b. if you obtain information which shows your earlier response was incorrect when made, or your earlier response, although correct when made, is no longer true. Failure to amend your response in light of such information is, in substance, a knowing concealment.

Where an interrogatory does not specifically request a particular fact, but where such fact or facts are necessary to make the answer to that Interrogatory complete, understandable, or not misleading, you should include such fact or facts as part of your answer.

DEFINITIONS

1. “All documents” means every document or group of documents that are known to you or that can be located or discovered by a reasonably diligent search.

2. “McDonough” “You,” “Your,” or “Plaintiff,” refers to Plaintiff, Dr. James Eric McDonough, and also includes any agent, employee, attorney, legal assistant, paralegal, or other person acting or purporting to act, or who acted or purported to act, on behalf of Dr. James Eric McDonough at any time until the present, or during any other indicated period of time.

3. City,” refers to Defendant, the City of Homestead, and any agent, employee or other person acting or purporting to act, or who acted or purported to act, on behalf of the City of Homestead at any time until the present, or during any other indicated period of time.

4. “Communications” includes both written and verbal exchanges including, but not limited to, verbal conversations, telephone calls, letters, notes, memoranda, electronic mail (e-mails), reports, telegrams, confirmations, exhibits, drawings, sketches, minutes, transcripts, summaries and any other “document” as later defined that constitutes, confirms, embodies or otherwise relates to the communications.

5. “Complaint” refers to the Fourth Amended Complaint filed by Plaintiff in the case known as *McDonough v. City of Homestead*, filed in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 17-17515 CA (30).

6. “Concerning” includes referring to, responding to, relating to, connected with, supporting, memorializing, regarding, discussing, analyzing, evidencing, showing, depicting, describing, reflecting, implying or constituting.

7. “Demonstrating” includes but is not limited to: referring to, responding to, relating to, connected with, supporting, memorializing, discussing, analyzing, evidencing, showing, depicting describing, reflecting, implying or constituting.

8. “Document” shall be given its broadest possible meaning, and shall denote the original or, if unavailable, a copy of the original, in draft or final form, including “redlined” revisions of any written, typed, printed, recorded, computerized, sorted, or graphic matter, however produced, animated, stored or reproduced, and of every kind and description. The term “document(s)” shall include but not necessarily be limited to contracts, agreements, drawings, specifications, sketches, letters, correspondence, messages, notes, memoranda, agreements, modifications, change orders, unilateral changes, electronic mail (e-mails) or other communications, records of telephone conversations, books, records, confirmations, drafts, notes, work papers, bills, ledgers, status reports, diaries, daily reports, minutes of meetings, journals, entries in journals, personal work papers, personal work files, diaries, logs, punchlists,

transmittals, submittals, financial statements, audit reports, financial data, status reports, calendars, schedules, studies, summaries, reports, charts, books, drawings, diagrams, exhibits, video tapes, photographs, movies, tapes, recordings, transcripts, purchase orders, subcontracts, amendments, proposals, estimates, data sheets, computer printouts, computer diskettes or drives, compact disks (CDs), optical disks, whether sent or received, databases, computer programs, all other records kept by electronic, photographic or mechanical means and all copies or reproductions thereof which are different in any way from the original. The term "document" shall mean all of the above that are in your custody, possession, or control.

9. "Individual" or "Person" means any natural person, any legal or business entity, and/or any public or quasi-public entity.

10. "Identify" or "identity" when used in reference to a natural person means that you shall state:

- a. His/her full name;
- b. His/her present business and home address and telephone number; and,
- c. His/her present employer and his/her present position with such employer.

11. "Identify" or "identity" when used in reference to a document means that you shall state:

- a. The date of its preparation;
- b. Its author and sender;
- c. The addressee or other intended recipient thereof;
- d. Persons who received copies thereof;
- e. The type of document, e.g., letter, memorandum, inventory list, work notes, etc.;
- f. Its title, heading, or other designation, numerical or otherwise;
- g. A summary of its contents or other means of identifying it; and

h. Its location and custodian.

12. "Person" shall mean any individual, corporation, proprietorship, partnership, trust, association or any other entity.

13. As used herein, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall include each of the other genders. The term "including" means "including without limitation."

14. Any term defined in the Fourth Amended Complaint shall have the same meaning herein, unless otherwise defined.

INTERROGATORIES

1. For each request for admissions (served simultaneously with these interrogatories) that you deny or provide a qualified admission, please state all facts supporting such denial or qualified admission. As part of your response, please identify all witnesses with knowledge and documents supporting your response.

ANSWER:

VERIFICATION

JAMES ERIC MCDONOUGH

STATE OF FLORIDA)
) ss.:
COUNTY OF _____)

BEFORE ME, the undersigned authority, personally appeared JAMES ERIC MCDONOUGH and who is [personally known to me] or [who has provided _____ as identification], deposes and says that the facts set forth in the foregoing are true and correct.

WITNESSES my hand and seal on this ____ day of _____, 2019.

Notary Public, State of Florida

Notary Printed name

My Commission Expires: